

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 122203-001

Blue Cross Blue Shield of Michigan

Respondent

Issued and entered
this 1st day of December 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On July 6, 2011, XXXXX, on behalf of his minor daughter XXXXX¹ (the Petitioner), filed a request with the Commissioner of Financial and Insurance Regulation for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on July 13, 2011.

The Commissioner immediately notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information it used to make its final adverse determination. The Commissioner received BCBSM's response on July 21, 2011.

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner is enrolled as an eligible dependent under a group health plan that is underwritten by BCBSM. Her benefits are defined in BCBSM's *Community Blue Group Benefits Certificate* (the certificate).

¹ Born October 30, 1998.

On December 25, December 26, and December 31, 2010, the Petitioner received home health services from a home health care provider that does not participate with BCBSM. The charge for this care was \$1,200.00. BCBSM denied coverage for these services.

The Petitioner appealed BCBSM's denial. BCBSM held a managerial-level conference on May 13, 2011. At the conclusion of the internal grievance process, BCBSM issued a final adverse determination dated May 25, 2011.

III. ISSUE

Is BCBSM required to cover the Petitioner's home health care provided by a nonparticipating provider?

IV. ANALYSIS

Petitioner's Argument

The Petitioner was hospitalized on December 22, 2010, with a bone infection in her left foot. She received intravenous antibiotics and had surgery to remove the infected bone on December 25, 2010. The doctor determined she could leave the hospital at approximately 4:00 p.m. that day if a home health nurse could teach her parents how to administer her medication through an intravenous PICC line at home. The nurses at the hospital called a home health provider that participates with BCBSM but it was closed. They then called XXXXX which does not participate with BCBSM but was open and could send a nurse to conduct the needed training.

On December 31, 2010, the Petitioner had a reaction to the antibiotic she was using. She went to the hospital and was told she needed a different antibiotic which was administered differently. Therefore, her parents again needed to be trained on the new method of administration. By this time it was late in the afternoon and once again the participating home health care agency was closed (New Year's Eve) so the nonparticipating provider was again used to train the parents.

The Petitioner's parents believe that BCBSM should cover the non-network provider since the network provider was not available and it would be less costly to pay for home care than for her to stay in the hospital.

BCBSM's Argument

In "Section 3: Coverage for Hospital, Facility and Alternatives to Hospital Care," the certificate states:

Home Health Care Services

This program provides an alternative to long-term hospital care by offering coverage for care and services in the patient's home.

The services described below must be:

- Prescribed by the attending physician
- Provided and billed by a **participating** home health care agency
- Medically necessary . . .

On p. 3.39 the certificate also states:

Services That Are Not Payable

* * *

- Services performed by a nonparticipating home health care provider

While the home health care services were prescribed by a physician and were medically necessary, they were not provided and billed by a participating home health care agency. Therefore, BCBSM argues the services are not payable.

Commissioner's Review

The certificate language is clear: to be covered, home health care services must be provided by a home health care provider that participates with BCBSM. It is not disputed in this case that they were provided by nonparticipating provider.

The Commissioner understands the Petitioner's desire to be out of the hospital during the holidays. It may even be true, as the Petitioner's father indicates, that the home health care was less expensive than having the Petitioner remain in the hospital. However, there is nothing in the certificate that requires BCBSM to cover home health services from a nonparticipating provider, even if no participating provider is available.

Based on the foregoing, the Commissioner concludes and finds that BCBSM is not required to cover the Petitioner's home health care by a nonparticipating provider.

V. ORDER

Blue Cross Blue Shield of Michigan's final adverse determination of May 25, 2011, is upheld. BCBSM is not required to cover the Petitioner's home health care services from December 25 through December 31, 2010.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner